



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1260]

Certain Toner Supply Containers and Components Thereof (II)

Notice of Commission Final Determination Finding a Violation of Section 337; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission

(“Commission”) has found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a general exclusion order (“GEO”) prohibiting the importation of certain infringing toner supply containers and components thereof, as well as cease and desist orders (“CDOs”) against certain defaulting respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Canon”). 86 FR 19287-88 (Apr. 13, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), based on the importation into the United States, the sale for importation, and the sale within the United

States after importation of certain toner supply containers and components thereof by reason of infringement of certain claims of thirteen patents: U.S. Patent Nos. 10,209,667; 10,289,060; 10,289,061; 10,295,957; 10,488,814; 10,496,032; 10,496,033; 10,514,654; 10,520,881; 10,520,882; 8,565,649 (“the ’649 patent”); 9,354,551 (“the ’551 patent”); and 9,753,402 (“the ’402 patent”). *Id.* at 19287. The complaint further alleges that a domestic industry (“DI”) exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the ’649, ’551, and ’402 patents (collectively, “the Asserted Patents”) as to the accused products identified in the notice of investigation (“NOI”). *Id.* The NOI named eleven respondents: (1) Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”) of Sichuan, China; (2) Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”) of Sichuan, China; (3) Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”) of Ganyuqu, China; (4) ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”) of SiChuanSheng, China; (5) Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”) of Los Angeles, California; (6) Do It Wiser, LLC d/b/a Image Toner of Wilmington, Delaware; (7) Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) of Chengdushi, China; (8) MITOCOLOR INC. (“TopInk”) of Rowland Heights, California; (9) Xianshi yanliangqu canqiubaihuodianshanghang of Shanxisheng, China; (10) Zhuhai Henyun Image Co., Ltd. of Zhuhai, China (collectively, the “Defaulting Respondents”); and (11) Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”) of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.* at 19287-88. The Commission’s determination in Inv. No. 337-TA-1259 will separately address any violation of section 337 based on infringement of the asserted claims of the remaining patents in Canon’s complaint. *See* 86 FR 19284-86 (Apr. 13, 2021).

On May 27, 2021, the Commission granted Canon's motion to amend the complaint and NOI to change the identification of Do It Wiser, LLC d/b/a Image Toner to Do It Wiser, Inc. d/b/a Image Toner (hereinafter, "Do It Wiser") and to make related changes in paragraph 31 of the complaint. Order No. 6 (May 17, 2021), *unreviewed by* 86 FR 29806-07 (June 3, 2021).

On September 7, 2021, the Commission terminated the following asserted claims from the investigation based on Canon's withdrawal of the complaint as to those claims: (i) claim 2 of the '649 patent; (ii) claims 2, 3, 6, and 7 of the '551 patent; and (iii) claims 25-27, 39-41, and 46 of the '402 patent. Order No. 10 (Aug. 12, 2021), *unreviewed by* Comm'n Notice (Sept. 7, 2021).

Also on September 7, 2021, the Commission terminated respondent KenoGen from the investigation based on Canon's withdrawal of the complaint as to KenoGen. Order No. 12 (Aug. 13, 2021), *unreviewed by* Comm'n Notice (Sept. 7, 2021). As a result, the ten Defaulting Respondents are the only respondents remaining in this investigation.

On October 29, 2021, the Commission found the Defaulting Respondents in default for failing to respond to the complaint and NOI and failing to show cause why they should not be found in default. Order No. 15 (Sept. 29, 2021), *unreviewed by* Comm'n Notice (Oct. 29, 2021).

On October 1, 2021, Canon filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting a recommendation that the Commission issue a general exclusion order ("GEO"), issue cease and desist orders ("CDOs") against certain respondents, and set a one hundred percent (100%) bond for any importations of infringing goods during the period of Presidential review. On October 25, 2021, OUII filed a response supporting Canon's motion and requested remedial relief. No Defaulting Respondent filed a response to Canon's motion.

On February 11, 2022, the presiding Chief Administrative Law Judge ("CALJ") issued an initial determination ("ID") granting Canon's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) the Commission has subject matter,

personal, and in rem jurisdiction in this investigation; (ii) Canon has standing to assert the Asserted Patents; (iii) Canon has satisfied the importation requirement as to all Defaulting Respondents; (iv) the accused products practice claims 1, 6, 7, 12, 25, and 26 of the '649 patent, claims 1, 4, and 5 of the '551 patent, and claims 1, 15-18, 32, 36, and 37 of the '402 patent; (v) Canon has satisfied the technical prong of the DI requirement with respect to the Asserted Patents; (vi) Canon has satisfied the economic prong of the DI requirement with respect to the Asserted Patents; and (vii) no claim of the Asserted Patents has been shown invalid. The CALJ's recommended determination on remedy and bonding recommended that the Commission: (i) issue a GEO; (ii) issue CDOs against eight respondents (*i.e.*, Digital Buyer, Do It Wiser, TopInk, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang); and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review. No party petitioned for review of the subject ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's *Federal Register* notice. 87 FR 9379-80 (Feb. 18, 2022).

On March 30, 2022, the Commission determined to review the ID in part. 87 FR 19707-09 (Apr. 5, 2022). Specifically, the Commission determined to review the ID's analysis of the economic prong of DI requirement. *Id.* The Commission further requested briefing on remedy, bonding, and the public interest. *Id.*

On April 13, 2022, Canon and OUII filed their initial written responses to the Commission's request for briefing. On April 10, 2021, Canon and OUII filed reply submissions.

Having reviewed the record of the investigation, including the ID and Canon's and OUII's submissions, the Commission has found a violation of section 337 with respect to Defaulting Respondents. The Commission affirms, with modified analysis, the ID's findings that the economic prong of the DI requirement has been satisfied under section 337(a)(3)(A) and

(B). *See* 19 U.S.C. 1337(a)(3)(A), (B). (Commissioner Kearns finds the economic prong satisfied under section 337(a)(3)(A) and takes no position with respect to section 337(a)(3)(B)). (Commissioner Stayin writes separately, but joins the Commission's determination that the economic prong of the DI requirement has been satisfied under section 337(a)(3)(A) and (B).) The Commission also corrects two typographical errors on pages 50 and 58 of the ID, as explained in the Commission's opinion.

Moreover, the Commission finds that the statutory requirements for issuance of a GEO under section 337(g)(2) are met. *See* 19 U.S.C. 1337(g)(2). The Commission also finds it appropriate to issue CDOs against Digital Buyer, Do It Wiser, TopInk, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang. *See* 19 U.S.C. 1337(g)(1). In addition, the Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(g)(1).

The Commission therefore has determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain toner supply containers and components thereof that infringe one or more of claims 1, 6, 7, 12, 25, and 26 of the '649 patent; claims 1, 4, and 5 of the '551 patent; or claims 1, 15, 16, 17, 18, 32, 36, and 37 of the '402 patent; and (2) CDOs against Digital Buyer, Do It Wiser, TopInk, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang. The Commission has also determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the Accused Products that are subject to the GEO and CDOs. *See* 19 U.S.C. 1337(j).

The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's opinion and orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise

provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on July 20, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 20, 2022.

Katherine Hiner,
Acting Secretary to the Commission.

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